

REMARKS

An Amendment and Response Under 37 C.F.R. §1.111 was filed on September 25, 2009, and a Notice of Non-Compliant Amendment was issued on October 5, 2009 in response to this Amendment and Response. The Notice of Non-Compliant Amendment asserted that a complete listing of claims was not present. Applicants have, by the present Response Under 37 C.F.R. §1.111, provided a complete listing of claims. Accordingly, reconsideration and withdrawal of the Notice of Non-Compliant Amendment is respectfully requested. The remainder of the remarks below are substantially identical to the remarks submitted previously in the Response Under 37 C.F.R. §1.111 filed on September 25, 2009.

Applicants would like to express appreciation to the Examiner for the detailed official action provided. Upon entry of the present amendment, the specification and claims 31 and 42 will have been amended. No new matter has been added. Claims 31-32, 34-43, 45-53, 55-56 and 69-72 are presently pending in the application.

Objection to the Specification

The Examiner has objected to the specification, finding that paragraph [0053] includes an error in a reference numeral. In compliance with the Examiner's request, this error has been corrected by the present amendment to the specification.

Objection to the Claims

The Examiner has objected to claims 31 and 48 (and the claims dependent therefrom), asserting that there is insufficient antecedent basis for the limitation "the support member." Applicants respectfully disagree with the Examiner's assertion, noting that those of skill in the

art would readily understand that “the support member” refers to “the elongate support member,” since this is the only support member referred to in these two claims. Nevertheless, without agreeing to the propriety of the objection, Applicants have amended “support member” to --- elongate support member---, solely to expedite the prosecution of the application, and respectfully request withdrawal of the objection.

Rejections Under 35 U.S.C. § 102

In the outstanding Official Action, the Examiner has rejected claims 31, 32, 34-43, 45-53, 55, 56 and 69-72 under 35 U.S.C. §102(b) as being anticipated by SHIPP et al., essentially setting forth the same rejection applied in the previous Official Action of February 20, 2008. In the “Response to Amendment” Section of the Official Action, the Examiner found that the last limitation of independent claims 31 and 42 was still unpatentable, asserting that the “delay” of SHIPP is equivalent to the limitation of “later,” and that in SHIPP, “there is a delay between the steps of closing the jaw and moving the clip even though the steps are dependent on a continuous force.”

Applicants respectfully disagree with the Examiner’s overly broad interpretation of SHIPP, and note that it would be readily understood by those of skill in the art that there are two discrete stages/forces being applied in the present claimed invention. Nevertheless, without agreeing to the propriety of the objection and solely to expedite the prosecution of the application, Applicants have cosmetically amended independent claims 31 and 42 solely to clarify that the stages (now renamed “forces”) are discontinuous, thereby rendering explicit what was already implied in these claims. To the contrary, and as admitted by the Examiner, SHIPP’s steps are continuous.

With respect to the Examiner's rejection of dependent claims 32, 34-41, 43, 45-53, 55, 56 and 69-72 under 35 U.S.C. § 102, Applicants submit that these claims are dependent from one of allowable independent claims 31 and 42, which is allowable for at least the reasons discussed *supra*. Thus, these dependent claims are also allowable for at least the reasons discussed *supra*. Further, all dependent claims set forth a further combination of elements neither taught nor disclosed by any of the applied references.

Absent a disclosure in a single reference of each and every element recited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since the applied references fail to disclose each and every element recited in independent claim 31 and 42, these claims and the claims dependent therefrom, are not anticipated thereby. Accordingly, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 102.

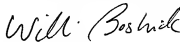
SUMMARY AND CONCLUSION

Applicants have made a sincere effort to place the present application in condition for allowance and believe that they have now done so. Applicants have discussed the disclosure of each of the Examiner's references and have pointed out the shortcomings and deficiencies thereof with respect to the features recited in Applicants' claims.

Applicants note that this amendment is being made to advance prosecution of the application to allowance, and no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. The amendments to the claims have not been made for a purpose related to patentability, but rather are clarifying amendments that are cosmetic in nature by rendering explicit what was already implied in these claims, as described *supra*. The amendments to the claims should thus be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto. Accordingly, this amendment should not be considered a decision by Applicants to narrow the claims in any way.

Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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